

CAROLINE TUCKER

IBLA 96-503

Decided March 25, 1999

Appeal from a decision of the Oregon State Office, Bureau of Land Management, rejecting mineral patent application. OR-44233.

Decision affirmed as modified.

1. Mining Claims: Patent

Under 43 C.F.R. § 1821.2-2(a), BLM properly rejects an application for a mineral patent executed more than 10 days prior to filing.

2. Administrative Procedure: Decisions--Bureau of Land Management--Mining Claims: Patent--Words and Phrases

Where a 10-day deadline for filing a mineral patent application has irrevocably passed so that the applicant can do nothing to prevent rejection of her untimely application, BLM should reject the application as untimely (subject to an immediate appeal), and timely advise the applicant what it would require if and when she reexecutes her application or files an amended application. BLM can then adjudicate whether any new or re-executed application complies with its filing requirements.

APPEARANCES: Caroline Tucker, Wolf Creek, Oregon, pro se; Marianne King, Esq., Office of the Regional Solicitor, Pacific Northwest Region, U.S. Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Caroline Tucker (Tucker or Appellant) has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM or Respondent), dated July 18, 1996 (Decision), rejecting her application for mineral patent OR-44233, with respect to the Janet and Rogue Gold placer mining claims, ORMC 21425 and ORMC 29796, and cancelling the Mineral Entry Final Certificate previously issued. The application was rejected because it was untimely filed in that it was executed more than 10 days prior to filing with BLM in violation of 43 C.F.R. § 1821.2-2(a). The Decision also

determined that the application was deficient in describing the \$500 in improvements expended on each of the mining claims. We do not address the latter issue for the reasons stated hereunder.

The Decision appealed from stated, in relevant part:

Because of the untimely filing of the application and noted deficiencies, the Mineral Entry Final Certificate was issued in error.

Based upon the regulations referenced above, the mineral patent application is hereby rejected; and the Mineral Entry Final Certificate cancelled.

(Decision at 1.)

In her Notice of Appeal filed with the Board, Appellant claims her Application for Patent should not be rejected for the following reasons:

- 1) I should not be penalized because your Authorized Officer did not reject my application when it was filed July 8, 1988;
- 2) On March 9, 1990 at the time of publication of Notice of application for Mineral Patent your Authorized Officer made not [sic] mention of a time discrepancy * * *;
- 3) November 7, 1990 your Authorized Officer requested more information * * * Why was the time discrepancy not brought to my attention at this time;
- 4) On March 28, 1991 when the First Half of the Mineral Entry Final Certificate was issued by your Authorized Officer the time discrepancy still was not mentioned---Why? * * *
- 5) On June 7, 1996 George Brown from the Spokane Office of Bureau of Land Management set dates to do the Mineral Examination, again, did not mention of [sic] a time discrepancy * * *; and
- 6) Page 3, Paragraph 4 of my application does describe the improvements and developments expended on each of the mining claims * * *.

Again, I feel I am being penalized because your Authorized Officers did not do their jobs properly in the examination of the application.

The Patent Moratorium was not in effect at the time of filing or at the time of First Half Mineral Entry Certificate

issuance. Had your Authorized Officers done their job correctly, I could have refiled in a timely manner.

(Notice of Appeal at 1-2.)

In its Answer, BLM states that Appellant's assertions of error ignore the fact that it is the applicant's obligation to meet all applicable statutory and regulatory requirements for issuance of a patent from the United States. (Answer at 3.) BLM claims, therefore, that the fact that Appellant was not notified by the BLM that she failed to timely file her patent after its execution is irrelevant. *Id.* Respondent urges that the fact that Appellant may have relied upon BLM's erroneous acceptance of her facially defective application cannot confer legitimacy upon that application. (Answer at 4.) BLM states that whether or not BLM advised her, Appellant was required by regulation to file her application within 10 days of executing it. *Id.* BLM further quotes from 43 C.F.R. § 1821.2-2(a), which states: "The authorized officer will reject all applications to make entry which are executed more than 10 days prior to filing." *Id.* Finally, BLM notes that in *G. Donald Massey*, 114 IBLA 209, 211 (1990), the Board commented upon this provision as follows: "We note that, as the 10-day deadline had been irrevocably missed as of the date of BLM's decision, Massey could do nothing to prevent rejection." *Id.* BLM urges that the same situation exists here.

[1] Although Tucker did appeal, she did not challenge per se BLM's holding rejecting her application for failure to comply with 43 C.F.R. § 1821.2-2(a). Moreover, we hold that BLM properly rejected her application for this reason. Under 43 C.F.R. § 1821.2-2(a), BLM "will reject all applications to make entry which are executed more than 10 days prior to filing." As the 10-day deadline had been irrevocably missed as of the date of Tucker's filing, Appellant could do nothing to prevent rejection. Thus, BLM was required to reject Tucker's application, since it was not filed timely. See 2 American Law of Mining § 51.07[2] (2d ed. 1989).

[2] Although not dispositive, we must comment on our concerns with the procedure BLM adopted in this case. The Decision's caption notes that Tucker's application was "rejected" and that the Mineral Entry Final Certificate was "cancelled." The term "cancelled" reflects that the Mineral Entry Final Certificate had issued to Appellant on December 3, 1990. BLM treated Appellant in all respects over a significant period of time (1988-1996) as if she had met all requirements for a patent, only to hold that her application had been void ab initio because it had been executed more than 10 days prior to filing. By this process, Appellant was precluded from refiled because the land, at the time of the rejection, had become subject to a patent moratorium. While it is true that the burden is on the applicant to file complete and accurate documents with BLM that meet all procedural requirements, it is similarly incumbent upon BLM to act responsibly with respect to all applicants for patents and not mislead them through silence. BLM should have timely rejected Tucker's application for noncompliance with 43 C.F.R. § 1821.2-2(a), subject to an immediate

reapplication. Then, BLM could simply have advised her what, if anything, in addition it required if and when she reexecuted her application. The thrust of Tucker's appeal makes precisely this point.

Finally, we note that it appears that a refund of Tucker's tender of \$100 in purchase money for the Mineral Patent Application is authorized in these circumstances by 43 U.S.C. § 1734(c) (1994). Such fees are nonrefundable except where the claimant pays the fee and does not receive the benefit expected from the Government. See Anson L. Renshaw, 140 IBLA 288, 291 (1997). To this extent, the Decision is modified.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed as modified.

James P. Terry
Administrative Judge

I concur:

John H. Kelly
Administrative Judge